

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.1626 of 2006

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Dated:03.02.2006

Between:

K.Sudarshan Reddy & M/s.K.Venkateswarlu & Co.(J.V.) H.No.5-10-
71/12, Flat No.401,
Dr.D.T.Bhushanam Residency, Kishanpura, Hanamkonda
Dist.Warangal-506 001 represented by
Managing Partner K.Sudarshan Reddy.

..... PETITIONER

AND

The Superintending Engineer, S.R.S.P.Stage-II Circle, K.C.Camp,
Warangal, District.Warangal, and others.

.....RESPONDENTS

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ORDER:

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The petitioner Company is a Joint Venture. For the work of E.P.C.Package No.52, the petitioner-Joint Venture was awarded a contract. As per the terms of the contract, the petitioner is entitled to avail mobilization advance equivalent to 10 percent of the contract amount. The first installment of 5 percent is for machinery and equipment. The petitioner availed the first installment of mobilization advance. However, when it submitted the bills for the second installment of mobilization, the same were forwarded by the second respondent to the third respondent. It appears, by letter, dated 26.11.2005, the bills were returned seeking certain clarifications. The second respondent sent a letter dated 05.12.2005 giving necessary clarifications. But, by a communication, dated 06.12.2005, the third respondent returned the bills observing that the clarification given by the second respondent is not convincing. Therefore, the present writ petition is filed, *inter alia*, seeking a direction to the respondents to pay the second installment of mobilization against the bank guarantee in terms of Clauses 49.1 and 49.2 of the conditions of Contract/Agreement Bond, dated

11.03.2005.

This matter was initially heard on 30.01.2006. In the communication, dated 06.12.2005, the third respondent refers to earlier communication, dated 26.11.2005, which according to him holds good. Therefore, this Court directed the learned Assistant Government Pleader for Irrigation to produce a copy of the communication, dated 26.11.2005, addressed by the third respondent to the second respondent.

Today the learned Assistant Government Pleader placed before this Court a copy of the letter dated 26.11.2005 addressed by the third respondent to the second respondent, and also Memo No.103276/F3(2)/05-3, dated 08.12.2005, issued by the Government of Andhra Pradesh, streamlining the payment of mobilization advance of machinery, and clarifications. Based on these two communications, the petitioner does not satisfy Clause No.49.1 of the conditions for release of the second mobilization advance.

Though two persons formed a Joint Venture, according to the third respondent, the same would not satisfy the requirement of Clause 49.1 of the conditions. As per Clause 49.1 of the conditions, 5 percent of the contract amount for machinery equipment is payable to the contractor on production of satisfactory evidence that the machinery and equipment is procured by Joint Venture. If the machinery is procured in the name of the individual participants in the Joint Venture, the same is not compliance with Clause 49.1. In the Memo, dated 08.12.2005, the Government of Andhra Pradesh in Finance (Works & Projects) Department, clarified this position, directing that mobilization advance on machinery is payable against production of invoices in proof of purchase of the machinery by the contractor/firm/Joint Venture. In this case, admittedly, the contract was awarded to K.Sudarshan Reddy & M/s.K.Venkateswarlu & Company Joint Venture, and therefore, if the machinery is procured/purchased by the participants in the individual names, the same would not be in accordance with Clause 49.1 of the agreement.

In view of the above, this Court does not find any infirmity in the action of the third respondent in rejecting the bills for second installment of mobilization advance. This Court observes that it shall be open to the petitioner to approach the third respondent through the second respondent by producing proper and satisfactory evidence of having procured the machinery equipment in the name of the Joint Venture, which was awarded by the contract. As and when such evidence is produced by way of revised quotations/invoices, it shall be open to respondents 2 and 3 to consider the request of the petitioner for payment of mobilization advance.

The Writ Petition, with the above observations, is accordingly disposed of. No costs.

(V.V.S.RAO, J)

03.02.2006

vs

